

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CHECKERS DRIVE-IN	:	
RESTAURANTS, INC.,	:	CIVIL ACTION
Plaintiff,	:	
v.	:	No. 02-CV-252
	:	
BENJAMIN LASTER, et al.,	:	
Defendants.	:	

GREEN, S.J.

JULY _____, 2002

MEMORANDUM/ORDER

Presently pending are Defendant Benjamin Laster's Motion to Transfer Venue on grounds of *forum non conveniens*, Plaintiff's Memorandum in Opposition, and Defendant's Reply thereto. For the following reasons, Defendant's motion, considered pursuant to 28 U.S.C. §1404(a), will be denied.

I. FACTUAL AND PROCEDURAL BACKGROUND

This matter arises out of a contractual relationship between the Plaintiff, Checkers Drive-In Restaurants, Inc., and the sole individual Defendant, Benjamin Laster.¹ The Plaintiff alleges that the parties entered into a contract in February of 2001, whereby the Defendant would operate and manage seventeen (17) of the Plaintiff's restaurants. Twelve (12) restaurants were located in Philadelphia, four (4) in New Jersey, and one (1) in Delaware. The Plaintiff also alleges that the Defendant defaulted under terms of their agreement by failing to make certain payments, and by failing to execute certain documents attached to the agreement. In January of 2002, the Plaintiff claims that notices of termination were sent to the Defendant, regarding the

¹ Defendant Laster asserts that Defendants Quality Food Pennsylvania, Quality Food New Jersey, Quality Food Delaware, and Quality Food Group of Washington, D.C. will not actively defend these claims. (See Defendant's Motion to Transfer Venue at 1 n. 1.) In so far as this motion is brought, these Defendants do not oppose the motion.

operation of the restaurants and the use of the Plaintiff's trademarks, proprietary information and system. The Defendant allegedly did not comply with the termination notices.

Plaintiff filed a Complaint, on January 16, 2002, seeking preliminary and permanent injunctive relief, and damages for breach of contract and for conduct in violation of the Lanham Act, 15 U.S.C. § 1601 et seq. An Amended Complaint was filed on April 9, 2002, alleging breach of contract, account stated, unjust enrichment, trademark infringement, trade dress infringement, unfair competition, and conduct in violation of the Lanham Act, specifically 15 U.S.C. § 1114, § 1116(a), § 1117, § 1121, and § 1125. On April 22, Defendant filed the instant Motion to Transfer Venue on grounds of *forum non conveniens*.

II. DISCUSSION

Jurisdiction is premised on 28 U.S.C. § 1331 which gives "original jurisdiction of all civil actions arising under the...laws...of the United States." An action under the Lanham Act triggers federal question jurisdiction. See 15 U.S.C. § 1101, 15 U.S.C. § 1125. Pursuant to 28 U.S.C. § 1367(a), this Court may exercise supplemental jurisdiction over the Plaintiff's state law claims because they are "so related to claims in the action . . . that they form part of the same case or controversy under Article III of the United States Constitution." All of Plaintiff's causes of action arise from the same contractual relationship with the Defendant, and the alleged breaches thereof.

"For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." 28 U.S.C. § 1404(a). Courts consider "all relevant factors to determine whether on balance the litigation would more conveniently proceed and the interests of justice be better served by

transfer to a different forum.” See Jumara v. State Farm Ins. Co., 55 F.3d 873, 879 (3d. Cir.

1995) (citations omitted). Private interests include:

1. Plaintiff’s forum preference as manifested in the original choice;
2. The defendant’s preference; whether the claim arose elsewhere;
3. The convenience of the parties as indicated by their relative physical and financial condition;
4. The convenience of the witnesses—but only to the extent that the witnesses may actually be unavailable for trial in one of the fora;
5. The location of the books and records (similarly limited to the extent that the files could not be produced in the alternative forum).

See id. at 879. Public interests include:

1. The enforceability of the judgment;
2. Practical considerations that could make the trial easy, expeditious, or inexpensive;
3. The relative administrative difficulty in the two fora resulting from court congestion;
4. The local interest in deciding local controversies at home;
5. The public policies of the fora;
6. The familiarity of the trial judge with the applicable state law in diversity cases.

See id. at 879-80. The moving party has the burden of establishing the need for transfer, and where a defendant is the movant, a “plaintiff’s choice of venue should not be lightly disturbed.”

See id. at 879.

Defendant has not met its burden of demonstrating a strong case for a change of forum. Defendant argues that the more convenient venue is in Washington, D.C., despite the fact that Plaintiff’s choice of venue is legally proper. Defendant claims that the transportation of his six filing cabinets from Washington, D.C. to Philadelphia constitutes an unnecessary burden. However, Defendant does not make clear whether transportation of all these documents would even be necessary, let alone overwhelmingly burdensome. In addition, Plaintiff demonstrates a similar burden in that it has relevant documents in Florida, and would have to find the means of producing them in Philadelphia. The balance of inconveniences with regard to access to

documentary evidence does not significantly favor of Defendant.

Defendant also claims that his three key defense witnesses (Defendant, Defendant's wife and accountant, and Defendant's son and partial owner) all reside in Washington, D.C., and all of Defendant's records and documents are in Washington, D.C. The inconvenience of three witnesses traveling from Washington, D.C. to Philadelphia does not outweigh the inconvenience that Plaintiff's witnesses would suffer in traveling to Washington, D.C. Additionally, the fourth witness Defendant mentions is Cynthia Downing, of the state of Georgia. Defendant offers no evidence or argument as to how travel to Washington, D.C. is significantly less burdensome than to Philadelphia, located only a couple of hours north. Finally, Defendant fails to recognize the contradictory nature of protesting the inconvenience of trying a case in Philadelphia when Defendant has voluntarily entered into a contract to operate and manage twelve (12) franchises in Philadelphia. If Philadelphia served as a convenient location for a potentially long-term business venture, the city should serve as a convenient location for the litigation in relation thereto.

With regard to local interests, this case is of no significant local controversy in either Philadelphia or Washington, D.C. Plaintiff's cause of action arises from alleged breaches of an agreement and non-compliance with notices of termination, all of which, if they occurred, occurred with regard to the operation of franchises in Philadelphia, New Jersey, and Delaware. Meanwhile, Defendant maintains that the bulk of his administrative activities took place in Washington, D.C. There is no public interest consideration that significantly favors one city over another; and consequently I find little reason to disturb Plaintiff's preference on those grounds.

III. CONCLUSION

For the foregoing reasons, and in consideration of the facts in their totality, Defendant Benjamin Laster has not met the necessary burden of proof to warrant a change of venue under 28 U.S.C. § 1404(a). Therefore, Defendant's motion will be denied. An appropriate order follows.

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Defendants.	:	

ORDER

AND NOW, this _____ day of July, 2002, upon consideration of Defendant Benjamin Laster's Motion to Transfer Venue on grounds of *forum non conveniens*, Plaintiff's Memorandum in Opposition, and Defendant's Reply thereto, **IT IS HEREBY ORDERED** that:

1. Defendant's motion is **DENIED**;
2. Defendants shall file an Answer to the Amended Complaint within twenty (20) days of this Order.
3. The deputy clerk shall schedule a pretrial conference for September of 2002.

BY THE COURT:

CLIFFORD SCOTT GREEN, S.J.